

(1988) 03 MAD CK 0041

In the Madras High Court

Case No : C.M.P. No. 15514 of 1986 in App. S.R. No. 42056 of 1986

P.V. Chandrasekharan and Others

APPELLANT

Vs

Thirumalai Chit Funds and Others

RESPONDENT

Date of Decision : 04-03-1988

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 1A, Order 33 Rule 2, Order 33 Rule 5, Order 44 Rule 1

Citation : AIR 1989 Mad 30 : (1988) 1 LW 429 : (1988) 1 MLJ 394

Hon'ble Judges : K.N. Natarajan, J

Bench : Single Bench

Advocate : R.M. Krishna Raju, for the Appellant; B.T. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Natarajan, J.—This petition is filed by the appellants, who are the defendants, to grant leave to them to file the appeal as indigent

persons, against sons, against the judgment in O. S. 361 of 1983, Sub Court, Salem. It is alleged in the affidavit filed by the second petitioner, for

himself and on behalf of other appellants, in support of the said application that a preliminary decree was passed against them directing them to

pay a sum of Rs. 7,41,699.18 together with interest at 6 per cent per annum on Rs. 5,01,600 from the date of the decree till the date of realisation,

on the basis of deposit of title deeds on 22-10-1982 and that the said suit was decreed on incorrect appreciation of facts and law. They have no

means or resources to pay the requisite court fee of Rs. 56003.75. It is further alleged that apart from an investment of Rs. 28,000 with the United

Solvent Extractions Pvt. Ltd., at Duriva Kurichi and a monthly income of Rs. 200 he has no other movable or immovable properties. The

appellants have no properties and they have not alienated or transferred any property within two months prior to the filing of the above appeal and

they have also not entered into any contract with any one in respect of the subject-matter of the appeal. Hence, they pray for permission to file the

appeal as indigent persons. The said application is resisted by the respondents. The 6th respondent filed the counter-affidavit for himself and other

respondents denying the allegations stated in the affidavit filed by the second petitioner. It is contended that the father of the petitioners left O. 80.5

Hec. in Valayamadevi Village, Attur taluk and after the death of their father, the petitioners became the owners of the properties and the same have

been registered in their names. The said properties are worth more than Rs. 1.5 lakhs, and the, 6th respondent is willing to purchase the properties

for Rs. 1 lakh if sold by the petitioners and also pay a sum of Rs. 56,000 towards court-fee. It is further alleged that petitioners 1 and 2 (P. V.

Chandrasekharan and P. V. Srinivasan) have got shares of the total face value of Rs. 80,000 with the United Solvent Extractions Pvt. Ltd., at

Deviakurichi, that the market value of those shares is Rs. 2 lakhs and that the sixth respondent is prepared to purchase those shares if transferred in

his name for Rs. one lakh. It is further alleged that the 4th petitioner Janardhana Gupta is conducting business in oiled and de-oiled rice bran while

the second petitioner P. V. Srinivasan is running a same business under the name and style of Sri Sudarsan Enterprises.

2. Findings were called for from the Master with regard to the means of the petitioners. Learned Master after recording the evidence of P. W. 1

and R. W. 1 has submitted his findings to the effect that-

On consideration of the evidence adduced at the time of enquiry, I find that the first and second petitioners own shares worth of Rs. 80,000 and

the same is available for sale and there is intending buyer to purchase it for Rs. 54,000 and the petitioners own 2.16 cents of land in Vanayamadevi

village and that too is available for sale and there is intending buyer to purchase it for Rs. one lakh with mortgage or without mortgage and as such

the petitioners are not indigent persons." Again the matter came up for hearing before this Court after receipt of the said findings. Learned counsel

for the petitioners, Mr. R. M. Krishna Raju, submitted that in view of the fact that the petitioners are not stated to have possessed of any ready

cash on the date of the plaint, from the mere fact that they are possessed of certain properties and the respondents offered to purchase the properties and in evidence P. W. 1 accepted the offer, it cannot be held that the petitioners are possessed of sufficient means and they are bound to sell the properties under restraint. According to the learned counsel, for sale of the shares, it has to be approved by the Board of Directors and that there is impediment in this regard.

3. On the other hand, the learned counsel for the respondents, Mr. B. T. Seshadri, submitted that the report of the Master on the question of means is final since it is only this court which delegated the authority to the Master and called for the report and when once after due enquiry a report is submitted, it is final. The learned counsel also submitted that in the instant case it has been established beyond all doubt that the petitioners have not disclosed their assets. Further, they have got sufficient means to pay the court fees. Learned counsel drew my attention to para 3 of the affidavit filed by the second petitioner for himself and on behalf of the other petitioners. It was pointed out that they have disclosed only an investment of Rs. 28,000 with the United Solvent Extraction Pvt. Ltd., at Durviakurichi, and his monthly income of Rs. 200. Except this he has simply stated that they have no other property. He has also pointed out the various admissions made by P, W. 1, in his evidence, wherein he has admitted that after the death of his father, in 1981, the petitioners became the owners of the vacant land in Velaimadevi village measuring 2 acres and 16 cents in S. No. 134/3 and that they have not disclosed their right in respect of the said property in the affidavit filed in support of the application. He has also admitted that even though his father mortgaged the property in 1977 or 1978 to Lakshmi Vilas Bank, Attur, for Rs. 44,000, there is no document to evidence the same. He has admitted that he approached Lakshmi Vilas Bank to give Bank guarantee on the deposit of documents of title in respect of the said property. He has admitted that the said lands are in their possession and that he is willing to sell the properties to the respondents who are offering to pay Rs. 1 lakh. At page 12 of his evidence he has stated that the statement made in the counter-affidavit that the total face value of the shares held by P. W. 1 and his brother Chandrasekharan is Rs. 80,000 in United Solvents

Extractions Ltd. is correct. He has also stated that what he has stated in para 3 of the affidavit that apart from an investment of Rs. 38,000 with the

United Solvents Extractions Ltd., and a monthly income of Rs. 200 he has no other movable or immovable properties is not correct. Learned

counsel for the respondents Mr. B. T. Seshadri submitted that on the lone

ground of non-disclosure of the assets in the affidavit filed in support of the application, the petition is liable to be dismissed. In this connection, the

learned counsel drew my attention to the decision reported in Chellammal Vs. Muthulakshmi Ammal, . A Division Bench of this Court consisting of

Leach C. J. and Clark. J. held:-

Under Order 33 Rule 2 read with Order 33 Rule 5(a) and Order 44 Rule 1 it is the bounden duty of the petitioner applying for leave to sue or

appeal as a pauper to make a full and accurate verified statement of his or her properties. The utmost good faith is required of the petitioner in the

matter of the disclosure of his or her assets and any intentional departure from good faith, whatever the motive may be, must result in the dismissal

of the petition. Accordingly where the petitioner obtained leave to appeal in forma pauperis by practising fraud on the court by not disclosing all his

assets the leave must be cancelled.

In Rajakumar Bhagwatsaran Vs. V.P.V. Rajan and Others, a Division Bench consisting of K. Veeraswami C. J. and V. V. Raghavan J. relied on

the earlier decision cited above and held as follows : --

Utmost good faith is expected on the part of the applicants who seek leave to sue in forma pauperis. Motive for suppression is irrelevant. It is no

use contending that having regard to the large amount of court fee that has to be paid, suppression of Rs. 300 per mensem (on facts) would not

make any difference. The point is one of good faith and not whether, in view of the large amount of court fee, the appellant who is shown to be in

good faith making the application without full details would be unable to pay court fee"".

In K. V. Abubucker v. Madhava Panicker 1982 T. L. N. J. 431 Natarajan J. (as he then was) held that the non-disclosure of the income of Rs.

500 by way of salary by the petitioner is sufficient to reject the application. The learned judge considered the earlier decisions and approved the

ratio laid down in those decisions. Applying the ratio laid down in the said

decisions to the facts of this case, I am of the view that in view of the specific admission of P. W. 1 himself about the failure to mention the 2 acres and 16 cents of land, which is worth more than a lakh of rupees and also the shares of the face value of Rs. 80,000 possessed by them in the affidavit filed in support of the petition, the petition is liable to be dismissed.

4. It is also contended by the learned counsel for the respondents, Mr. B. T. Seshadri, that the report of the Master is final and it has to be accepted. In support of his argument, he cited the decision in *Amhalavanan v. Bank of Madurai Ltd.* (1970) 83 Mad LW 549, wherein it was held that from the statutory procedure prescribed for the institution and admission of the appeals in forma pauperis, under Order 44 Rule 2 read with Order 33 CPC when once an enquiry into the pauperism was directed to be done by the lower Court, the report is final as it is the result of delegation of authority. In view of the ratio laid down in the said decision, the report submitted by the Master in this case is final. It is to be noted that even though on the question of fact, it is final, yet, on the question of law, this court can consider the objections raised by the appellants petitioners herein with regard to the pauperism.

5. On going through the report of the Master, I find that his finding is supported by acceptable evidence and convincing reasons with regard to the means of the appellants and it does not suffer any infirmity. It is clear from the finding that the petitioners are possessed of 2 acres and 16 cents at Valaimadevi village. The same is available for sale. Even the respondents are prepared to purchase the same for Rs. 1,00,000. Further, the petitioners 1 and 2 have shares of the face value of Rs. 80,000. The shares are available for sale. The respondents are willing to purchase the same for Rs. 1 lakh. Learned counsel for the petitioners Mr. R. M. Krishna Raju, only submitted that there is some impediment in respect of the sale of the shares, as the Board of Directors have to approve the same. In this connection my attention was drawn to the Memorandum and Articles of Association of the United Solvent Extractions (P) Ltd. Under the head "transfer and transmission of shares" (Articles 16 and 17) it is stated that a share may be transferred by a member to another selected by him, but save as aforesaid, no share shall be transferred

to any person who is not a member of the company so long as any Member of the company is willing to purchase the same. If a member who is desirous of selling his shares is not able to find another member to purchase his shares, he shall give notice to the company of his intention to sell his shares and shall also state the number of shares he intends to sell. At the end of Article 17, it is also stated that if the shares or any of the shares are not purchased by any other member, then the member intending to sell may, within a period of three months from the date of receipt of communication from the. Company that no member is willing to purchase the shares, sell those to any other person approved by the Board.

Learned counsel for the respondent submitted that in the instant case, the father of R. W. 1 is a member and that there is no impediment for purchase by him. Further there is no prohibition in transferring the shares and as such there cannot be any impediment as such as stated by the petitioners.

6. Now as regards the contention of the learned counsel for the petitioners that the means or resources would only mean the ready cash available

to pay the court-fee, the learned counsel for the respondents drew my attention to various decisions and submitted that means is only the capacity

to raise money necessary for payment of court-fee and not ready cash. In *Fakruddin and Another Vs. Iqbal Ahmad and Another*, while

considering the word "means", it was held-

Court-fee is payable in cash but it is not essentially for a plaintiff to be in possession of so much cash in order to be able to pay the fee. If he has

sufficient means, he can raise the necessary cash for payment of the fee, in which case, he should not be declared to be a pauper.

In *Ponnusami Pillai v. Venkatarama Chetti* (1961) 2 Mad LJ 243, which is relied on by the learned counsel for the petitioners, *Kunhamed Kutti J.*

held -

The words "sufficient means to enable him to pay the Court-fee", in Rule 1 of Order 33 C.P.C. are not equivalent to possession of sufficient

properties. The possession contemplated is not possession of the requisite property but the means i.e., the capacity to raise the money necessary

for payment of court-fee. In deciding the question of means, it is for the court to decide, on the facts of each case, whether it should take into

consideration or not the subject matter in dispute.

In Velu and Another Vs. Nagaraja Nattar and Others, Balasubrahmanyam J. held:--

"Means" connotes a man's resources. If a man can augment, as of right resources, even though he may not technically own the resources in

question himself, there can be no doubt that he was possessed of the means to pay court-fees within the contemplation of this rule.

It is established beyond doubt that the petitioners are possessed of shares whose face value is Rs. 80,000 and also landed properties to the extent

of 2 acres and 16 cents whose value is more than Rs. one lakh. The mere fact that the respondents offer to purchase the properties for Rs. 1 lakh

and the share in the company for Rs. 54,000 it cannot be said that there is restraint. It is open to the petitioners to raise money over the properties

and pay the court-fee. It is not open to them to contend that only if it is shown that they are possessed of cash, it can be said that they are

possessed of means to pay court-fee. Hence, there is absolutely nothing to differ from the finding rendered by the Master that the petitioners are,

possessed of sufficient means to pay the court-fee payable on the memorandum of appeal. In view of my findings on both the points, the petition

deserves to be dismissed and accordingly it is dismissed. However, in the circumstances of the case, there will be no order as to costs. The

petitioners are granted two months' time from this day to pay the court-fee payable on the memorandum of appeal.